

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)

I.A. No.95 of 2021

In

Company Appeal (AT) (CH) (Ins) No.24 of 2021

[Application filed under Rule 11 of NCLAT Rules, 2016 seeking Clarification of the Judgment dated 26.03.2021 passed by the National Company Law Appellate Tribunal, Chennai Bench in Company Appeal (AT)(CH)(Ins)No.24 of 2021]

IN THE MATTER OF:

M/s.OREN HYDROCARBONS PRIVATE LIMITED

28/2b, Saravana Street,

T.Nagar, Chennai 600 017

... Applicant/Appellant/Corporate Debtor

V.

1. M/s. Akzo Nobel Industrial

Chemicals BV

Velperweg, 76, 6824 BM

Arnhem, The Netherlands

... 1st Respondent/Operational Creditor

2. Mr.Asokan Nagarajan

F-1, First Floor, Block-2,

Diamond Homes

Kailash Avenue,

Old Perungalathur,

Chennai – 600 063

... 2nd Respondent/Interim Resolution Professional

Present:

For Petitioner/Appellant/Corporate Debtor: Mr.A. Muraleedharun, Advocate

For 1st Respondent/Operational Creditor : Mr.F.S.Dhiman, Advocate

For 2nd Respondent : Mr.Arvind Pandiyan, Sr. Counsel
(For Interim Resolution Professional)

For Financial Creditor : Ms.Aditi Mittal, Advocate
(For Axis Bank Ltd.)

ORDER

(Virtual Mode)

1. According to the Learned Counsel for the Petitioner/Appellant/Corporate Debtor, the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench Court-1, Chennai on 15.04.2021 in IA/298/CHE/2021 in IBA/938/2019 had directed the Petitioner/Applicant to approach the National Company Law Appellate Tribunal to seek its clarification relating to paragraph 3 and 4 of the order dated 26.03.2021 in Company Appeal (AT)(CH)(Insolvency) No.24 of 2021.

2. The Learned Counsel for the Petitioner/Appellant/Corporate Debtor submits that this 'Tribunal' while dismissing the Company Appeal (AT)(CH)(Ins)No.24 of 2021 on 26.03.2021 'as withdrawn' at paragraph 3 and 4 had observed the following:

3. "However, this 'Tribunal' grants liberty to the 'Appellant'/'Corporate Debtor' to file an 'Application under Section 12A of the 'Insolvency & Bankruptcy Code' before the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench-1, Chennai) within 10 days from today and to seek redressal of its grievances if it so desires/advised.

4. It is made clear that in the event of the 'Appellant'/'Corporate Debtor' filing of the 12A withdrawal Application under 'Insolvency & Bankruptcy Code', 2016, within the time granted, the same shall be taken on file by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench-I, Chennai) and to dispose of the same as expeditiously as possible, of course, in accordance with Law. Till the time granted within which the 'Appellant'/'Corporate Debtor' files a withdrawal Application under Section 12A of the Insolvency & Bankruptcy Code, 2016, the 'Constitution of Committee of Creditors' shall be stayed, if not already constituted."

3. It is represented on behalf of the Petitioner/Appellant that based on the permission granted by this 'Appellate Tribunal' in Company Appeal (AT)(CH)(Ins)No.24 of 2021 on 26.03.2021, the Petitioner/Appellant/Corporate Debtor filed I.A.No.298/2021 in IBA/938/2019 before the 'Adjudicating Authority' [National Company Law Tribunal, Division Bench (Court-1), Chennai].

4. The Learned Counsel for the Petitioner/Appellant takes a stand that the Petitioner/Appellant submitted to the 'Adjudicating Authority' that since the 'Interim Resolution Professional' took over the management of the Company and the Moratorium was declared by the 'Adjudicating Authority' [National Company Law Tribunal, Division Bench (Court-1), Chennai], the Petitioner/Appellant is not in a position to transfer/settle the final instalment of USD 1,48,900 to the First Respondent/Operational Creditor from the Company/Corporate Debtor's Account. Therefore, it is the contention of the Learned Counsel for the Petitioner/Appellant that the 'Adjudicating Authority' had directed the Petitioner/Appellant to approach the 'Hon'ble Appellate Tribunal' seeking clarification in relation to paragraph 3 and 4 of the judgment dated 26.03.2021 in Company Appeal (AT)(CH)(Ins)No.24 of 2021.

5. It is the submission of the Learned Counsel for the Petitioner/Appellant that e-filing Application was filed before the 'Adjudicating Authority' [National Company Law Tribunal, Division Bench (Court-1), Chennai] on 01.04.2021 and that on 26.03.2021 when the Company

Appeal (AT)(CH)(Ins) No.24 of 2021 was disposed of by the National Company Law Tribunal, Division Bench (Court-1), Chennai, the 'Committee of Creditors' was not constituted. Further, it is the version of the Learned Counsel for the Petitioner/Appellant that the Petitioner/Appellant/ 'Corporate Debtor' had made the whole payment of Rs.11,110,613.00 was made to M/s.Nouryan Chemicals Ind. Pvt. Ltd. (beneficiary) an associate subsidiary of the Respondent (NEFT Payment from DBS Bank) on 27.04.2021.

6. It is the contention of the Learned Senior Counsel for the Second Respondent/ 'Resolution Professional' that for ten days from the date of judgment dated 26.03.2021 in Company Appeal (AT)(CH)(Ins)No.24 of 2021, the Second Respondent/'Resolution Professional' had not constituted the 'Committee of Creditors' and that only on 12.04.2021, after the passage of 10 days from the receipt of the judgment of the 'Appellate Tribunal', the 'Committee of Creditors' was constituted.

7. That apart, it is the plea of the Second Respondent/'Resolution Professional' that as on 15.04.2021, when the 'Adjudicating Authority' passed the order in IA/298/CHE/2021 in IBA/938/2019 no Form FA was furnished and there was no settlement. In short, Form FA is to be furnished to the 'Resolution Professional' and in turn, the 'Resolution Professional' is to file the same in accordance with Regulation 30-A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which speaks of 'Withdrawal of Application' under Section 12A of the I & B Code.

8. The Learned Counsel for the First Respondent/'Operational Creditor' submits that since the Appellant/'Corporate Debtor' had made the whole payment, the First Respondent/ 'Operational Creditor' is ready to withdraw the case.

9. The primordial plea of the Learned Counsel appearing for the 'Financial Creditor' (Axis Bank) is that it is for the Petitioner/Appellant/'Corporate Debtor' to file an 'Application for Withdrawal' as per Regulation 30-A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same is to be filed through the 'Interim Resolution Professional' after following the procedure prescribed therein.

10. It must be borne in mind that Section 12-A of the I&B Code came into force on 06.06.2018. As a matter of fact, Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is very much relevant for 'Withdrawal of Application'. Further, a 'Withdrawal of Application' made under Rule 4, 6 or 7 may be permitted by the

'Adjudicating Authority' on a request made by the Applicant before its admission. Also, that Regulation 30-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is relevant for 'Withdrawal of Application'.

11. Be it noted, that 'Withdrawal of Application' as per Regulation 30-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 should be submitted to the 'Interim Resolution Professional' or the 'Resolution Professional' as the case may be in Form-FA of the schedule, etc.

12. Be that as it may, in view of the fact that this 'Tribunal' on 26.03.2021 in Company Appeal (AT)(CH)(Ins)No.24 of 2021 at Paragraph 4 had clearly stated that 'in the event of Appellant/'Corporate Debtor' filing the Section 12A 'Withdrawal Application' under the I & B Code, 2016, within the time granted, the same shall be taken on file by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench Court-1, Chennai) and to dispose of the same as expeditiously as possible, of course, in accordance with Law', the said observation is 'self-explanatory' and it is for the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench Court-1, Chennai) to proceed further and to dispose of I.A.298/CHE/2021 in IBA/938/2019 on merits, by following lawful procedure.

13. With the above said observations and directions, the IA No.95 of 2021 in Company Appeal (AT) (Insolvency) No.24 of 2021 stands disposed of. No costs.

**[Justice Venugopal M]
Member (Judicial)**

**[Balvinder Singh]
Member (Technical)**

**07.06.2021
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